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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/264,065	03/08/1999	JOEL D. PESHKIN	20944.2200	2575

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EXAMINER

BURD, KEVIN MICHAEL

ART UNIT	PAPER NUMBER
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2631

DATE MAILED: 05/26/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/264,065

Applicant(s)

PESHKIN ET AL.

Examiner

Kevin M Burd

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. This office action, in response to the amendment filed 3/12/2004, is a final office action.

Response to Arguments

2. Applicant's arguments filed 3/12/2004 have been fully considered but they are not persuasive. Applicant has added the limitation, "said command information for controlling telephone line operations of said modem" or "said command information for controlling telephone line operations of said data pump" to the independent claims. Applicant respectfully submit that Lumpkin's disclosure is merely concerned with a DMA interface and commands for operating the DMA interface and not commands for use by a modem for controlling telephone line operations of that modem as stated on page 12 of the response. As stated in the previous office action, Lumpkin discloses the DMA interface is a component of the data communication device 201 (figure 2) and the data communication device 201 is a modem (column 1, lines 18-24). In addition, Lumpkin discloses for transfer of data from the DTE 200 through the data communications device 201 and to the network 104 (column 7, lines 49-51), commands are generated such as acknowledgements and interrupts to allow data transmission to the network to commence (column 7, line 65 to column 8, line 16). That data will be transferred through registers then will be transmitted over the network (column 8, lines 10-16). Therefore, the command information controls the data transmitted or received over the telephone

lines connecting the modem and the network. This is the "controlling telephone line operations of the modem" or the data pump. For this reason and the reasons stated in the previous office action, the rejections of the claims are maintained and stated below. Applicant has added new claim 54. The rejection of this claim is also stated below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 4-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Lumpkin et al (US 5,943,505).

Regarding claim 1 and 4, Lumpkin discloses using data communication devices (DCDs) such as modems (column 1, lines 18-28). These modems comprise physical channels that are further comprised of logical channels (column 7, line 48 to column 8, line 16). The first logical channel transmits only command information such as ACKs. Other logical channels will transmit the data that is available (column 12, line 58 to column 13, line 19). The logical channels are initialized and the appropriate data or commands are sent on the logical channel (column 13, lines 20-44). Types of commands are interrupts or acknowledgments and a type of data is information. The

communication will be interrupted when data is available (column 13, lines 37-39).

Lumpkin discloses for transfer of data from the DTE 200 through the data communications device 201 and to the network 104 (column 7, lines 49-51), commands are generated such as acknowledgements and interrupts to allow data transmission to the network to commence (column 7, line 65 to column 8, line 16). That data will be transferred through registers and then will be transmitted over the network (column 8, lines 10-16). Therefore, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network. This is the "controlling telephone line operations of the modem" or the data pump.

Regarding claims 5-9, 14 and 15, requests are made to request specific blocks of memory and then the modem is configured specifying the number of bytes of data and the specific logical channel for transmission (column 7, lines 54-65).

Regarding claims 10-13 and 17-19, the modem is shown in figure 2, element 201.

Regarding claim 16, figure 2 shows a down stream element coupled to the modem.

Regarding claims 20, 31, 42 and 53, Lumpkin discloses using data communication devices (DCDs) such as modems (column 1, lines 18-28). These modems comprise physical channels that are further comprised of logical channels (column 7, line 48 to column 8, line 16). The first logical channel transmits only command information such as ACKs. Other logical channels will transmit the data that is available (column 12, line 58 to column 13, line 19). The logical channels are initialized

and the appropriate data or commands are sent on the logical channel (column 13, lines 20-44). Types of commands are interrupts or acknowledgments and a type of data is information. The communication will be interrupted when data is available (column 13, lines 37-39). The modem is shown in figure 2, element 201. The interface is capable of determining what type of information is being received so that information can be routed to the appropriate location. Lumpkin discloses for transfer of data from the DTE 200 through the data communications device 201 and to the network 104 (column 7, lines 49-51), commands are generated such as acknowledgements and interrupts to allow data transmission to the network to commence (column 7, line 65 to column 8, line 16). That data will be transferred through registers then will be transmitted over the network (column 8, lines 10-16). Therefore, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network. This is the "controlling telephone line operations of the modem" or the data pump.

Regarding claims 21-27, 29, 30, 32-38, 40, 41, 43-49, 51 and 52, the data will be received and stored in the interface (figure 2).

Regarding claims 28, 39 and 50, in a personal computer (DTE, column 1, lines 18-28), numerous bi-directional data lines, address lines, control lines and status lines are present which allows for fast data transfer when needed or requested. These lines are shown in figure 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumpkin et al (US 5,943,505) in view of Johnson et al (US 5,001,703).

Regarding claim 54, Lumpkin discloses the communication method describe above in paragraph 3. Lumpkin does not disclose monitoring the data information for embedded command information and executing the embedded commands. However, Johnson discloses, in figure 5a, transmitting command information or control bits in the same logical channel as data information (column 4, line 61 to column 5, line). It would have been obvious for one of ordinary skill in the art at the time of the invention to utilize the command and data information in one logical channel as shown by Johnson in the method of Lumpkin. Johnson shows the logical channel transmitting both command and data allows adaptive control of the communication since the commands can switch slot allocation according to channel capacity (column 5, lines 1-5). This will conserve spectrum and efficiency (abstract).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications; please mark "EXPEDITED PROCEDURE" or for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA. Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Burd, whose telephone number is (703) 308-7034. The Examiner can normally be reached on Monday-Thursday from 9:00 AM - 6:00 PM.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.

A handwritten signature in cursive script, reading "Kevin M. Burd", is positioned above a horizontal line.

Kevin M. Burd
PATENT EXAMINER
5/24/2004